

**Introduced by Senator Wolk**  
(Coauthor: Assembly Member Bill Berryhill)

February 8, 2011

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An act to amend Section 11460 of, to add Sections 11108, 11109, 11110, 11111, 11456, 11457, 11458, and 11915.2 to, and to add Article 9.4 (commencing with Section 11259) to Chapter 2 of Part 3 of Division 6 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 200, as introduced, Wolk. State water facilities: Sacramento-San Joaquin Delta: Delta conveyance facility.

(1) The United States Bureau of Reclamation operates the federal Central Valley Project and the Department of Water Resources operates the State Water Resources Development System, known as the State Water Project, to supply water to persons and entities in the state.

Existing law provides for the design, construction, operation, and maintenance of water development facilities by the state, including the State Water Project. State Water Project facilities include, among others, the facilities that are specified or authorized as part of the state Central Valley Project.

This bill would prohibit the construction of a new Delta conveyance facility, as defined, unless specified conditions are met, including (A) the adoption of an agreement by the Department of Water Resources and the Department of Fish and Game that specifies the stages of construction of the new Delta conveyance facility and (B) the establishment plans and agreements for the construction of specified water facilities and implementation of specified water programs meeting prescribed conditions as part of the state Central Valley Project. The bill would prohibit the transportation of water for the federal Central

Valley Project through state project facilities, with specified exceptions, unless certain conditions are met.

The bill would require the Department of Water Resources to enter into contracts with specified Delta agencies for purposes of recognizing the right of users to make use of the waters of the Delta and establishing criteria for minimum water quality in the Delta. The bill would require differences between the state and the Delta agencies to be resolved by arbitration if contracts have not been executed by January 1, 2012.

(2) Existing law prohibits the Department of Water Resources, in the construction and operation of the State Water Project facilities, from depriving a watershed or area in which water originates, of the prior right to the water required to supply the beneficial needs of that area, as specified.

This bill would require the project to be operated in compliance with specified water quality standards, and would require the department, the Attorney General, and other state agencies to take actions to ensure that the federal Central Valley Project is operated in compliance with those standards.

The bill would require the department to make an allocation of specified costs of the project to compensate for historic upstream depletion and diversions, and would prohibit specified public agencies from being responsible for those allocated costs. The bill would require the costs of benefits in the Delta resulting from project operations, in excess of detriments caused by the project, to be repaid by beneficiaries, to the extent those costs are allocable.

(3) Under existing law, the Department of Fish and Game and the Department of Water Resources are responsible for specified reports pertaining to water development projects and the Sacramento-San Joaquin Delta.

This bill would authorize the Department of Fish and Game to administer a study to determine the interrelationship between Delta outflow and fish and wildlife resources in the San Francisco Bay System and waste discharges into the San Francisco Bay system.

The bill would require the Department of Water Resources to study the possible interconnection between the State Water Resources Development System and water supply systems serving the Counties of Alameda, Contra Costa, San Joaquin, and San Mateo, and the City and County of San Francisco. The bill would also authorize the department to participate in an investigation of the need to enlarge Shasta Dam and Reservoir or other existing federal reservoirs.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11108 is added to the Water Code, to read:

11108. “Delta” means the Sacramento-San Joaquin Delta, as defined in Section 12220.

SEC. 2. Section 11109 is added to the Water Code, to read:

11109. “Delta conveyance facility” means a facility that conveys water directly from the Sacramento River to the State Water Resources Development System or the federal Central Valley Project pumping facilities in the south Delta.

SEC. 3. Section 11110 is added to the Water Code, to read:

11110. “Historical levels” means the average annual abundance, from 1922 through 1967, of the adult populations of fish and wildlife estimated to have lived in or been dependent on any area, as determined by the Department of Fish and Game.

SEC. 4. Section 11111 is added to the Water Code, to read:

11111. “Suisun Marsh” means the areas described in Section 29101 of the Public Resources Code, and subject to protection under Division 19 (commencing with Section 29000) of the Public Resources Code.

SEC. 5. Article 9.4 (commencing with Section 11259) is added to Chapter 2 of Part 3 of Division 6 of the Water Code, to read:

Article 9.4. Additional Facilities and Programs

11259. Notwithstanding any other law, construction of a new Delta conveyance facility shall not commence until all of the following conditions are met:

(a) The department and the Department of Fish and Game adopt a final agreement that specifies the stages of construction of the new Delta conveyance facility. For purposes of that agreement, the first stage of construction shall include new fish screens, which shall be tested for a period of not less than two years prior to the commencement of the next phase in order to establish the adequacy of the fish screens and operational criteria. The agreement shall provide that the last phase of construction shall not commence

1 until the department and Department of Fish and Game determine  
2 that the fish screens and operational criteria will adequately protect  
3 fish populations.

4 (b) Plans and agreements to protect the beneficial uses of the  
5 Delta are in place, including plans and agreements to do all of the  
6 following:

7 (1) Relocate the intake to the Contra Costa Canal to divert water  
8 from state water facilities, subject to the terms of a contract  
9 between the department and any appropriate agencies representing  
10 the beneficiaries.

11 (2) Complete the Los Vaqueros unit, located in eastern Contra  
12 Costa County, approximately eight miles west of the Clifton Court  
13 Forebay, is completed. Other offstream storage reservoirs may be  
14 located south or west of the Delta, as determined by the director,  
15 to be served by existing project facilities.

16 (3) Complete south Delta water quality improvement facilities,  
17 consisting of pumping plants, discharge canals, flow control  
18 structures, and channelization of sloughs to provide improved  
19 circulation, distribution, and quality of water in the southeastern  
20 Delta and to meet the needs of the south Delta area. Those facilities  
21 may include a turnout from the California Aqueduct to the Westley  
22 Wasteway of the federal Delta-Mendota Canal or other facilities  
23 to deliver water to the San Joaquin river. In lieu of that turnout,  
24 the director may enter an agreement with the Bureau of  
25 Reclamation to exchange an equivalent amount of water between  
26 the Delta-Mendota Canal and the California Aqueduct. Portions  
27 of any new facilities described in this subdivision that are not  
28 integrally connected with the new Delta conveyance facility shall  
29 be constructed only if a contract between an appropriate agency  
30 representing the beneficiaries and the department is executed.

31 (4) As mitigation for the past, present, and future adverse  
32 impacts of reduced delta outflows on the wildlife resources of the  
33 Suisun Marsh, construct, maintain, or operate, or contract with the  
34 Suisun Resources Conservation District for the construction,  
35 maintenance, or operation of, the Suisun Marsh overall protection  
36 facilities in accordance with a plan developed by the department  
37 in cooperation with the Suisun Resources Conservation District  
38 and the Department of Fish and Game. These facilities shall be  
39 completed no later than the first stage of construction of the new  
40 Delta conveyance facility, as described in subdivision (a).

1 (5) (A) The construction of facilities for utilizing groundwater  
2 storage space, as determined by the director to be feasible, for  
3 purposes of providing yield for the State Water Resources  
4 Development System based upon estimates by the department that  
5 groundwater storage can yield 400,000 acre-feet annually, in  
6 conjunction with existing and future surface water supplies, by the  
7 recharge and extraction of ground water and including the  
8 capitalized cost of delivering water for filling or refilling ground  
9 water storage space, in one or more of the following locations  
10 within the service area of the State Water Resources Development  
11 System:

12 (i) The south San Francisco Bay area in the Counties of Santa  
13 Clara and Alameda, served by the South Bay Aqueduct.

14 (ii) The San Joaquin Valley, served by the California Aqueduct.

15 (iii) Southern California, served by the California Aqueduct,  
16 including enlargement of the Devil Canyon Power Plant and the  
17 Mojave Division (East Branch) from the Cottonwood Power Plant  
18 to Silverwood Lake.

19 (B) A facility described in this subdivision shall not be  
20 constructed or operated within the boundaries of an agency that  
21 has contracted for water from the State Water Resources  
22 Development System without a contract with that agency.

23 (6) Except as provided in paragraph (7), the construction of the  
24 Glenn Reservoir-River Diversion Unit on the west side of the  
25 Sacramento Valley in the vicinity of Stony Creek and Thomes  
26 Creek watersheds.

27 (7) If the Glenn Reservoir-River Diversion Unit described in  
28 paragraph (6) is not feasible, as determined by the director, the  
29 construction of the Colusa Reservoir-River Diversion Unit on the  
30 west side of the Sacramento Valley in the western portion of the  
31 Counties of Glenn and Colusa. The Sites Reservoir portion of the  
32 unit may be developed at any time hereafter by the federal  
33 government as a facility of the federal Central Valley Project to  
34 serve the Tehama-Colusa Canal and any extension thereof into  
35 Yolo and Solano Counties.

36 (8) Implementation of wastewater reclamation programs to  
37 provide yield for the State Water Resources Development System.  
38 Facilities for these programs shall be economically competitive  
39 with alternative new water supply sources, and shall not be  
40 constructed or operated within the boundaries of any agency that

1 has contracted for water from the State Water Resources  
2 Development System, unless the department does so pursuant to  
3 a contract with that agency.

4 (9) Implementation of water conservation programs within the  
5 boundaries of agencies that have contracted for water from the  
6 State Water Resources Development System. However, the  
7 implementation of these programs is contingent upon contracts  
8 between the agencies and the department.

9 (10) (A) Construction of the Mid-Valley Canal Unit for the  
10 alleviation of groundwater overdraft and provision of water supply  
11 for state and federal water fowl management areas within the canal  
12 service area. Only water developed by facilities other than those  
13 of the project may be delivered through the canal unit, and that  
14 water shall be transported through the new Delta conveyance  
15 facility. The full cost of the canal unit incurred by the state shall  
16 be allocated to agricultural, municipal, and industrial contractors  
17 for the delivered water, and shall be repaid by those contractors.

18 (B) The Secretary of the Natural Resources Agency is authorized  
19 to indicate in writing the state's intent to agree to administer any  
20 federal multiple-purpose water project land and water areas of the  
21 Mid-Valley Canal Unit for recreation and fish and wildlife  
22 enhancement, as provided in Section 4601-13 of Title 16 of the  
23 United States Code, if the water project is constructed by the United  
24 States.

25 (11) Construction of the Western Delta Overland Water  
26 Facilities, to supply water to agricultural areas on Sherman Island,  
27 Jersey Island, Hotchkiss Tract, and adjacent areas.

28 (12) (A) Construction of facilities to provide for the  
29 transportation of water to termini to serve the Counties of San  
30 Joaquin and San Mateo, and the City and County of San Francisco.

31 (B) Construction of facilities to provide for the transportation  
32 of a supplemental water supply to areas in Alameda and Contra  
33 Costa Counties not served through the Contra Costa Canal or the  
34 South Bay Aqueduct. Water delivered through the facilities shall  
35 be water developed by facilities of the federal Central Valley  
36 Project.

37 11259.3. (a) Construction of facilities described in subdivision  
38 (a) of Section 11259 or paragraph (10) of subdivision (b) of Section  
39 11259 may commence only after the department has entered into  
40 a permanent agreement with the Department of Fish and Game

1 for the protection and enhancement of fish and wildlife that  
2 provides for both of the following:

3 (1) The restoration and maintenance of adult populations of fish  
4 and wildlife at historical levels in the Delta and the Suisun Marsh  
5 and the San Francisco Bay system westerly of the Delta.  
6 Maintenance at historical levels shall consider natural fluctuations  
7 in annual water supply and populations of fish and wildlife. The  
8 agreement shall include those limitations on exports and diversions  
9 to storage that are necessary to restoring and maintaining historical  
10 levels of fish and wildlife. To the extent practicable, fresh water  
11 needed to restore and maintain fish and wildlife in the San  
12 Francisco Bay System westerly of the Delta shall be provided from  
13 unregulated flows.

14 (2) The realization of the potential of the project for increasing  
15 resources above the levels described in paragraph (1) consistent  
16 with the contracts for water delivery and with other purposes of  
17 the projects.

18 (b) The department shall immediately proceed with activities  
19 prerequisite to the construction of the facilities described in  
20 subdivision (a) of Section 11259, and shall complete the design  
21 and commence construction as soon as possible.

22 11259.5. (a) The construction of any new facilities described  
23 in paragraphs (3), (6), (7), (8), and (10) of subdivision (b) of  
24 Section 11259 is conditional upon the completion of engineering,  
25 economic, environmental, and financial feasibility reports found  
26 favorable by the Director of Water Resources.

27 (b) Each financial feasibility report shall contain all of the  
28 following:

29 (1) An initial allocation of project costs to project purposes.

30 (2) The proposed method of financing.

31 (3) An estimate of the method of repayment.

32 (4) A designation of the water and power contractors that are  
33 proposed to repay the allocated reimbursable water development  
34 costs, including interest if any, on upstream storage, conveyance,  
35 operations, maintenance, and replacement.

36 (5) An estimate of the impact upon retail water prices in the  
37 various service areas of the project.

38 11259.7. (a) The environmental impact report for the Delta  
39 conveyance facility shall include a discussion of the sources of  
40 mineral, nutrient, and biological components of the Sacramento

1 River, and shall evaluate the possible impacts to those components  
2 resulting from the operation of the Delta conveyance facility.

3 (b) If the department determines that there will be significant  
4 adverse mineral, nutrient, or biological effects caused by the  
5 operation of the Delta conveyance facility, the department shall  
6 do all of the following:

7 (1) Evaluate mitigation measures in the environmental impact  
8 report.

9 (2) Propose cost allocation principles for mitigation.

10 (3) Prepare trial cost allocation.

11 (c) To the extent practicable, the department shall mitigate the  
12 adverse impacts on mineral, nutrient, and biological components  
13 caused by the operation of the Delta conveyance facility.

14 SEC. 6. Section 11456 is added to the Water Code, to read:

15 11456. (a) The department shall enter into permanent and  
16 enforceable contracts with the Delta agencies specified in  
17 subdivision (c) for purposes of recognizing the right of users to  
18 make use of the waters of the Delta and establishing criteria for  
19 the minimum quality of water that shall prevail within the Delta  
20 before water may be exported from the Delta. The quality shall be  
21 adequate to permit the preservation of Delta agricultural, domestic,  
22 and environmental uses, as provided in Part 4.5 (commencing with  
23 Section 12200).

24 (b) The contracts shall provide for reasonable payment to be  
25 made for any benefits that may be received through the water  
26 supply or quality provided in the contracts in excess of that which  
27 would have been available in absence of the operations of the State  
28 Water Resources Development System and of the federal Central  
29 Valley Project, and offset by any detriments caused by those  
30 operations. If contracts have not been executed by January 1, 2012,  
31 differences between the state and the Delta agencies specified in  
32 subdivision (c) shall be resolved by arbitration upon the written  
33 request of either party to the proposed contract identifying the  
34 issues upon which arbitration shall be held. Arbitration shall be  
35 conducted in accordance with Title 9 (commencing with Section  
36 1280) of Part 3 of the Code of Civil Procedure.

37 (c) The agencies with which the contracts shall be entered  
38 pursuant to subdivision (a) are the following:

39 (1) North Delta Water Agency.

40 (2) Central Delta Water Agency.



- 1 (3) South Delta Water Agency.
- 2 (4) East Contra Costa Irrigation District.
- 3 (5) Byron-Bethany Irrigation District.
- 4 (6) Contra Costa County Water Agency.
- 5 (7) Contra Costa County Water District.
- 6 (8) Suisun Resource Conservation District.

7 (d) When binding determinations have been made involving  
8 two-thirds of the total acreage within the Delta and Suisun Marsh  
9 located within the agencies specified in subdivision (c), the  
10 department or the remaining agencies may withdraw from the  
11 arbitration proceedings. This section shall not supersede any  
12 requirement for elections to approve the contracts, reached by  
13 negotiation or arbitration, as may be required by the act authorizing  
14 creation of the agency.

15 SEC. 7. Section 11457 is added to the Water Code, to read:

16 11457. The costs of providing any benefits received by  
17 agricultural, municipal, and industrial water users in the Delta as  
18 a result of project operations, in excess of any detriments caused  
19 by project operations, shall be repayable to the department by the  
20 beneficiaries, to the extent properly allocable. The costs of  
21 providing the benefits shall not be reimbursable by any State Water  
22 Resources Development System water service contractor who does  
23 not receive those benefits.

24 SEC. 8. Section 11458 is added to the Water Code, to read:

25 11458. (a) Except as provided in subdivision (b), the  
26 department shall not transport water for the federal Central Valley  
27 Project through project facilities, including the Delta conveyance  
28 facility, unless both of the following events occur:

29 (1) The Congress of the United States enacts legislation or the  
30 Secretary of the Interior enters into a permanent contract with the  
31 department that requires operation of the federal Central Valley  
32 Project in accordance with all of the following conditions:

33 (A) Operation in full coordination with the State Water  
34 Resources Development System and in compliance with water  
35 quality standards adopted pursuant to Section 13170 and as set  
36 forth as conditions in permits and licenses pursuant to Part 2  
37 (commencing with Section 1200) of Division 2. Actions of the  
38 board in establishing water quality standards and conditions in  
39 permits and licenses shall be a combined action meeting all of the

1 applicable requirements of Part 2 (commencing with Section 1200)  
2 of Division 2.

3 (B) Operation in conformity with a permanent agreement  
4 between the United States and the state for the protection and  
5 enhancement of fish and wildlife, which shall provide for both of  
6 the following:

7 (i) The restoration and maintenance of adult populations of fish  
8 and wildlife at historical levels in the Delta and the Suisun Marsh  
9 and the San Francisco Bay System westerly of the Delta.  
10 Maintenance at historical levels shall consider natural fluctuations  
11 in annual water supply and populations of fish and wildlife. The  
12 agreement shall include those limitations on exports and diversions  
13 to storage that are necessary to assist in restoring and maintaining  
14 historical levels of fish and wildlife. To the extent practicable,  
15 fresh water needed to restore and maintain fish and wildlife in the  
16 San Francisco Bay System westerly of the Delta shall be provided  
17 from unregulated flows.

18 (ii) The realization of the potential of the project for increasing  
19 these resources above the levels in paragraph (i), consistent with  
20 the contracts for water delivery and with other purposes of the  
21 projects.

22 (2) The federal government agrees to the transportation of water  
23 of the federal Central Valley Project through the facilities described  
24 in subdivision (a) of Section 11259.

25 (b) The department may transport water for the federal Central  
26 Valley Project through project facilities, in accordance with the  
27 following:

28 (1) Contracts between the department and the United States  
29 existing on January 1, 2012.

30 (2) The requirements of any decision of the State Water  
31 Resources Control Board.

32 (3) For the San Felipe Unit of the federal Central Valley Project,  
33 in implementation of the principles of the agreement between the  
34 department and the Santa Clara Valley Water District. If operation  
35 of the federal Central Valley Project to meet Delta water quality  
36 standards requires proportionate reduction in deliveries of water  
37 to the San Felipe Unit, those reductions will be made.

38 SEC. 9. Section 11460 of the Water Code is amended to read:

39 11460. (a) In the construction and operation by the department  
40 of any project under the provisions of this part, a watershed or area

1 ~~wherein in which~~ water originates, or an area immediately adjacent  
2 thereto—~~which that~~ can conveniently be supplied with water  
3 ~~therefrom from that area~~, shall not be deprived by the department,  
4 directly or indirectly, of the prior right to all of the water reasonably  
5 required to adequately supply the beneficial needs of the watershed,  
6 area, or any of the inhabitants or property owners ~~therein in that~~  
7 area.

8 *(b) The project shall be operated in compliance with water*  
9 *quality standards set forth as conditions in permits or licenses*  
10 *pursuant to Part 2 (commencing with Section 1200) of Division 2*  
11 *and in water quality control plans, as provided in Section 13170*  
12 *or as established by contract, including rectifying failure of the*  
13 *United States to operate the federal Central Valley Project in*  
14 *accordance with those standards. Actions of the state board in*  
15 *establishing water quality standards and conditions in permits*  
16 *and licenses shall be a combined action meeting all of the*  
17 *applicable requirements of Part 2 (commencing with Section 1200)*  
18 *of Division 2.*

19 *(c) The department, the Attorney General, and other state*  
20 *agencies shall take all necessary actions, including initiating or*  
21 *participating in judicial, administrative, and legislative*  
22 *proceedings, to assure that the federal Central Valley Project is*  
23 *operated in compliance with standards established by the state*  
24 *board, as specified in subparagraph (A) of paragraph (1) of*  
25 *subdivision (a) of Section 11458.*

26 SEC. 10. Section 11915.2 is added to the Water Code, to read:

27 11915.2. The department shall make an allocation of the costs  
28 to the project to provide water for water quality, fish and wildlife,  
29 and recreation in the Delta, Suisun Marsh, or San Francisco Bay,  
30 to compensate for historic upstream depletions and diversions that  
31 have reduced the amount of water naturally available in the Delta,  
32 Suisun Marsh, and San Francisco Bay. Public agencies that have  
33 contracted for water supplies from the project shall not be  
34 responsible for these allocated costs.

35 SEC. 11. (a) The Department of Fish and Game may  
36 administer a comprehensive study to determine the interrelationship  
37 between Delta outflow, including flushing flows, fish and wildlife  
38 resources in the San Francisco Bay system westerly of the Delta,  
39 and waste discharges into the San Francisco Bay system. The State  
40 Water Resources Control Board shall be responsible for the

1 portions of the study relating to waste discharges. The study and  
2 the work plan for it shall be reviewed by a committee composed  
3 of representatives of the San Francisco Bay Conservation and  
4 Development Commission, the State Water Resources Control  
5 Board, and the Department of Water Resources.

6 (b) The Department of Fish and Game shall report progress on  
7 the study annually to the Legislature. The report shall include  
8 recommendations for coordination with any other ongoing related  
9 study and for adjustment in funding, and the report shall include  
10 independent statements of review from each agency on the review  
11 committee.

12 (c) The primary purpose of the study described in subdivision  
13 (a) is to provide data to aid the State Water Resources Control  
14 Board in its consideration of the need to set standards to protect  
15 San Francisco Bay to assure that planning for future projects will  
16 not appreciably reduce unregulated delta outflows before the State  
17 Water Resources Control Board determines the need for water  
18 quality standards to protect the San Francisco Bay System westerly  
19 of the Delta.

20 (d) The study need not be completed before the final  
21 environmental impact report on the Delta conveyance facility, as  
22 described in subdivision (a) of Section 11259 of the Water Code,  
23 is adopted.

24 (e) The study may be included in any existing study performed  
25 by the Department of Fish and Game that meets the requirements  
26 of subdivision (a).

27 (f) This section shall not affect the obligation of the Department  
28 of Water Resources under the California Environmental Quality  
29 Act (Division 13 (commencing with Section 21000) of the Public  
30 Resources Code).

31 (g) (1) The requirement for submitting a report under  
32 subdivision (c) is inoperative on December 31, 2016, pursuant to  
33 Section 10231.5 of the Government Code.

34 (2) A report to be submitted pursuant to subdivision (c) shall  
35 be submitted in compliance with Section 9795 of the Government  
36 Code.

37 SEC. 12. The Department of Water Resources shall study the  
38 possible interconnection between the State Water Resources  
39 Development System and water supply systems serving the

1 Counties of Alameda, Contra Costa, San Joaquin, and San Mateo,  
2 and the City and County of San Francisco.  
3 SEC. 13. The Department of Water Resources may participate  
4 in an investigation of the need to enlarge Shasta Dam and Reservoir  
5 or other existing federal reservoirs for joint use of the State Water  
6 Resources Development System and the federal Central Valley  
7 Project, if a contract is executed for this purpose between the  
8 Secretary of the Interior and the Department of Water Resources.  
9 The study shall be subject to Section 11259.5 of the Water Code.

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